

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/17/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000041

FILED: _____

STATE OF ARIZONA

MICHAEL A LEE

v.

GEORGE D VARACLAS

GEORGE D VARACLAS
822 E UNION HILLS DR #129
PHOENIX AZ 85024-0000

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #8707861

Charge: CONTRACTING WITHOUT A LICENSE

DOB: 07/19/62

DOC: 09/12/99

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A) and 13-4032.

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This matter has been under advisement without oral argument and this Court has considered Memorandum submitted by the State of Arizona. Appellee, George Varacclas, has chosen not to file a memorandum in this case. The Court has considered and reviewed the record of the proceedings from the Phoenix City Court.

The State of Arizona appeals from an order by the trial judge denying all restitution in this case.

The controlling case concerning restitution for the crime of Contracting Without a License is State v. Wilkinson (John R. Porter, Real Party in Interest).¹ This court notes that the Wilkinson case was decided by the Arizona Supreme Court after the trial judge (the Honorable George Logan) had ruled in this case. The trial judge was forced to rule without guidance from the Wilkinson opinion on this restitution issue. The Arizona Supreme Court has summarized the legal requirements that are prerequisite for a restitution order:

Section 13-603 directs the court to "require the convicted person to make restitution" to the victim, "*in the full amount of economic loss as determined by the Court....*" (citation omitted) Economic loss includes *any loss incurred by a person as a result of the commission of an offense*. Economic loss includes lost interest, lost earnings and other losses which would not be incurred *but for* the offense. Economic loss *does not include* losses incurred by the convicted person, damages for pain and suffering, punitive damages or *consequential damages*. (citation omitted) Section 13-804(B) further defines the scope of restitution by directing the court to consider "*all losses caused by the criminal offense or offenses for which the Defendant has been convicted.*" (citation omitted)

¹ 202 Ariz. 27, 39 P.3d 1131 (2002).
Docket Code 512

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These statutes, considered together, define those losses for which restitution should be ordered. First, the loss must be economic. Second, the loss must be one that the victim would not have incurred but for the Defendant's criminal offense. As the Court of Appeals noted, however, 'but for' causation does not suffice to support restitution, for if it did, restitution would extend a consequential damages. Yet our criminal code expressly provides the contrary. (citation omitted) By eliminating consequential damages, the statutory scheme imposes a third requirement: the criminal conduct must directly cause the economical loss.²

The Arizona Supreme Court specifically differentiated in State v. Wilkinson³ between monies paid by the victims to the Defendant as part of the original contract and those losses incurred by the victims as the result of poor and unfinished work:

When (the Defendant) Porter presenting himself as a licensed contractor, entered agreements with T.S. and N.L. to provide contracting services, he violated A.R.S. Section 32-1151. As a direct result of (Defendant) Porter's offer to act as a licensed contractor, T.S. and N.L. agreed to pay, and did pay, all or a portion of the amounts due under their agreements with (Defendant) Porter. Porter's criminal actions directly caused those losses. Indeed, the original concept of restitution, and the form with the most direct link to criminal conduct, is that of forcing the criminal to yield up to his victim the fruits of the crime.

² State v. Wilkinson, 202 at 28-29, 39 P.3d at 1132-33.

³ Id.

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. . .

A different result obtains, however, as to the expenses the victims incurred because (Defendant) Porter failed to complete the work he contracted to do or did so in a faulty manner.... Therefore, the losses incurred as a result of Porter's poor or unfinished work constitute indirect damages and cannot qualify for restitution.⁴

Applying the Wilkinson decision to the facts of the instant case, retrospectively, it is clear that the trial judge erred in denying the State's request for restitution. The trial court must order restitution to the victims for all monies paid to Appellee, George Varacclas, pursuant to their agreements, as these monies are the "fruits of the crime."⁵ However, losses incurred as a result of Appellee Varacclas' poor and unfinished work cannot qualify for restitution.

IT IS ORDERED denying reversing the order of the trial judge denying restitution.

IT IS FURTHER ORDERED remanding this case to the trial court for a restitution hearing and for such other and other proceedings as are appropriate.

⁴ Id., 202 Ariz. at 29, 39 P.3d at 1133.

⁵ Porter had misrepresented himself as a licensed contractor to his victims, and the record is not clear in this case whether Appellee, Arthur Elftmann, made similar representations. Misrepresentation or not, the victims in this case should still be entitled to restitution as Appellee violated A.R.S. Section 32-1151 by his failure to have a contractor's license.